

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

EMILY SCRIPP,

Petitioner.

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CHARGE NO.: 2009CN1014

EEOC NO.: N/A

ALS NO.: 10-0149

ORDER

This matter coming before the Commission by a panel of two, Commissioners Rozanne Ronen and Nabi Fakroddin presiding, upon Emily Scripp's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CN1014; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER FINDINGS** as herein specified.

In support of which determination the Commission states the following findings of fact and reasons:

1. On September 19, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent. The Petitioner perfected the charge on October 29, 2008. The Petitioner alleged in her charge that Assistant Superintendant of Police, Matthew Tobias ("Tobias") discharged her because of her sex, female, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").
2. The Respondent had 365 days, or until October 30, 2009, to complete its investigation of the Petitioner's charge. The Respondent did not complete its investigation within 365 days. Thereafter, the Petitioner had 90 days, or until January 28, 2010, to file a Complaint with the Commission. The Petitioner did not file a Complaint with the Commission within the 90-day time period.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

3. On February 22, 2010, the Respondent dismissed the Petitioner's charge pursuant to Section 7A-102(G)(3) of the Act based on its determination that the time period to file a Complaint with the Commission had expired. On March 1, 2010, the Petitioner filed this timely Request.
4. In support of her Request, the Petitioner attaches a document titled "Declaration of Counsel." In this Declaration, the Petitioner's counsel of record states that the same investigator was assigned by the Respondent to handle both the instant charge and a related charge (Charge No. 2009CF1013), which the Petitioner had filed against Tobias's employer.²
5. The Petitioner's counsel states that at a fact-finding conference, the investigator handled both the instant charge and Charge No. 2009CF1013 as if they were a single charge. The Petitioner's counsel further states that the investigator indicated that both charges were being handled as one charge.
6. The Petitioner's counsel states in the Declaration that neither he nor the Petitioner recollect having received any separate letter or notice from the Respondent relative to the instant charge which stated when the Petitioner's time to file a Complaint with the Commission would expire.
7. The Petitioner's counsel states that when he and the Petitioner received a Notice of Dismissal of Charge No. 2009CF1013, they believed that Notice of Dismissal also pertained to the instant charge.³
8. Finally, the Petitioner's counsel states that the first time he and the Petitioner realized that the two charges were being treated as two separate charges was when the Respondent issued its Notice of Dismissal of the instant charge.
9. In her Request, the Petitioner argues that the 90-day time limit for filing a Complaint with the Commission should be equitably tolled because the Respondent, through its investigator, misled the Petitioner into believing that the instant charge had actually been dismissed for lack of substantial evidence, along with Charge No. 2009CF1013. The Petitioner argues that Illinois courts have held that equitable tolling applies to the Illinois Human Rights Act. The Petitioner argues that if the 180-day time limit for filing a charge with the Respondent can be equitably tolled, then the 90-day time limit for filing a Complaint with the Commission should also be subject to equitable tolling.

² On the same date the Petitioner filed the instant charge, September 19, 2008, the Petitioner also filed a charge of discrimination against the City of Chicago Police Department, Education & Training Division (No. 2009CF1013). Tobias is an officer employed by the Chicago Police Department. The same set of facts form the basis for the Petitioner's Charge No. 2009CF1013 and the instant charge under review in this Request.

³ Charge No. 2009CF1013 against the Chicago Police Department, Education & Training Division was dismissed for Lack of Substantial Evidence on January 26, 2010. The Complainant filed a timely Request for Review of the dismissal of this charge on March 1, 2010.

10. In its Response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for expiration of time to file a Complaint with the Commission. The Respondent argues that the statutory 365-day time period for the Respondent to complete its investigation expired on October 30, 2009. The Respondent argues the Petitioner had a 90-day window to file a Complaint with the Commission. The Respondent states it has no record that the Petitioner ever filed a Complaint with the Commission. The Respondent states that even if the Petitioner had filed a timely Complaint with the Commission, the Respondent would still be compelled to dismiss the charge pursuant to Section 7A-102(G)(3). The Respondent does not address the Petitioner's equitable tolling argument, nor the allegations made in the Declaration.

CONCLUSION

The Commission has determined that the Respondent's dismissal of the Petitioner's charge shall be vacated, and the charge shall be reinstated and remanded to the Respondent for further findings relevant to the issue of the applicability of equitable tolling to the 90-day time limit to file a Complaint with the Commission.

Illinois courts have stated that equitable tolling... "is a concept which should be applied to prevent injustice when the agency has knowingly misled a complainant or in some other manner acted unfairly." See Larrance v. Illinois Human Rights Commission, 166 Ill.App.3d 224, 232, 519 N.E.2d 1203, 1209 (4th Dist. 1988).

In this case, the Respondent did not address the Petitioner's equitable tolling argument. The Respondent's position is that it must dismiss the charge because by its calculation, the Petitioner's 90-day time limit to file a Complaint had expired.

However, if actions by the Respondent's investigator misled the Petitioner and caused the Petitioner to miss her deadline for filing a Complaint with the Commission, and if equitable tolling may be applied to the 90-day time limit for filing a Complaint with the Commission, then the Petitioner may still have time to file a Complaint with the Commission.

Therefore, the Respondent's dismissal of the charge is vacated and the matter is remanded with instructions that the Respondent provide further findings as to the following issues:

(a) Whether or not the investigator assigned to the instant charge and Charge No. 2009CF1013 told the Petitioner and her attorney that the two charges were being treated as a single charge;

(b) Whether or not the Respondent sent the Petitioner and/or her attorney any notice which stated that the Respondent's time to investigate the instant charge had expired, and that the Petitioner had 90 days to file a Complaint either with the Commission or the circuit court; and,

(c) Whether or not Illinois law precludes the Commission from applying equitable tolling to the 90-day time limit for filing a Complaint.

THEREFORE, IT IS HEREBY ORDERED THAT:

The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER FINDINGS** as specified in this Order.

This Order is not yet final and appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 13th day of October 2010.

Commissioner Rozanne Ronen

Commissioner Nabi Fakroddin